

**LEMON GROVE CITY COUNCIL**  
**AGENDA ITEM SUMMARY**

**Item No.** 1.1  
**Mtg. Date** April 19, 2016  
**Dept.** Development Services

**Item Title:** Professional Services Agreement with Dudek for the Preparation of a Program Environmental Impact Report for the General Plan Update

**Staff Contact:** David De Vries, Development Services Director

**Recommendation:**

Adopt a resolution (**Attachment B**) awarding an agreement with Dudek to provide a Program Environmental Impact Report (PEIR) with related assistance for the General Plan update.

**Item Summary:**

In support of the General Plan update efforts, the City invited firms to respond to a request for proposal (RFP) for the preparation of environmental compliance documents for the General Plan update. The RFP was publically advertised on March 16, 2016. Three firms submitted proposals and City staff, along with two outside panelists with related experience working with consultants on environmental documents, conducted interviews with all three firms on April 6, 2016. Staff and the panelists thoroughly reviewed each proposal. Based upon the proposals provided and interviews conducted, staff recommends that an agreement (**Attachment B**) is awarded to Dudek for an amount not to exceed \$142,290. Dudek was viewed as having the most related experience with the preparation of program environmental impact reports (PEIR) for General Plan updates, had staff available to expedite processing, provided policy analysis (other firms did not), provided rational tasks for completion within a tight time frame, made the greatest effort in understanding the community, and they also presented the lowest cost of the three firms. The project budget includes a contingency amount of \$5,500. Staff spoke with five individuals who have worked with Dudek and the project managers and four of the five had positive remarks, while one cautioned their practice with air quality analysis. Staff addressed the concern with Dudek and feels confident in their abilities to do the work assigned. The attached (**Attachment A – Exhibit 1**) includes the full contract and a budget and a scope of work for completion.

**Fiscal Impact:**

\$142,290 in professional services for the General Plan Update.

**Environmental Review:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review        | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [      ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Resolution with Agreement



## RESOLUTION NO. [ ]

### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA AWARDING AN AGREEMENT TO PREPARE A PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE GENERAL PLAN UPDATE

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**WHEREAS**, The General Plan was adopted in 1996. Subsequently, the City has adopted the 2001 Broadway Commercial Project Specific Plan, the 2005 Downtown Village Specific Plan, the 2006 Bikeways Master Plan, the 2010-2020 Housing Element, and the 2014 Health & Wellness Element; and

**WHEREAS**, General Plans are encouraged to be updated every 20 to 25 years per 2003 State Guidelines for General Plans; and

**WHEREAS**, the City Council identified an update to the Lemon Grove General Plan as a priority goal in FY15-16 and FY16-17 and budgeted funding for the General Plan update; and

**WHEREAS**, on August 4, 2015, the City Council adopted Resolution 2015-3357 approving a sponsored project agreement with Cal Poly San Luis Obispo's (SLO) Design Studio Team to conduct public outreach and prepare a draft community profile and General Plan update; and

**WHEREAS**, on September 15, 2015 and October 6, 2016, the City Council formed a 14 member adhoc focus group to advise city staff and the SLO Design Studio on its efforts with the General Plan outreach and assist with identifying issues and opportunities; and

**WHEREAS**, extensive public outreach was provided towards the preparation of the draft General Plan and community profile including: 1) SLO Design Studio contact with over 120 youth and 500 adults through interviews and surveys both online and in person; 2) three focus group meetings and related assignments; 3) On January 21, 2016, a community workshop was conducted on community design and economic development by CityPlace Planning; 4) On January 30, 2016, a community workshop was conducted on street development and circulation by Circulate San Diego; and 5) On February 16, 2016, a joint community and City Council public hearing was conducted and the City Council provided feedback related to the draft General Plan update; and

**WHEREAS**, public notifications for workshops and hearings were sent via listserve, newflash, and updates were posted on social media and the General Plan update webpage and focus group members and community workshop attendees were also notified about upcoming events; and

**WHEREAS**, on March 16, 2016, a request for proposals was publicly advertised and three responses were received from Dudek, REC, and Rick Engineering; and

**WHEREAS**, Dudek has special knowledge and expertise related to General Plan PEIR's based on their recent experience; and

**WHEREAS**, staff concluded that Dudek submitted a responsive and responsible proposal in the amount of \$142,290.00; and

**WHEREAS**, the City Council finds it in the public interest that an agreement for said services is awarded to Dudek; and

**WHEREAS**, Dudek has agreed to the attached professional agreement terms and scope of work as presented herein (**Exhibit 1**); and

# Attachment A

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California hereby: ]

1. Awards an agreement (**Exhibit 1**) to Dudek for \$142,290.00 (optional items may be considered by subsequent resolution); and
2. Authorizes the City Manager or designee to execute agreement and manage all project documentation. ]

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# Attachment A - Exhibit 1

**AGREEMENT FOR ENVIRONMENTAL COMPLIANCE DOCUMENTS  
RELATED TO THE CITY OF LEMON GROVE GENERAL PLAN UPDATE  
BY AND BETWEEN  
THE CITY OF LEMON GROVE  
AND  
DUDEK**

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and Dudek, a professional environmental firm (the "CONTRACTOR").

## **R E C I T A L S**

WHEREAS, the CITY desires to employ a CONTRACTOR to provide professional environmental services.

WHEREAS, the CITY has determined that the CONTRACTOR is a professional environmental firm and is qualified by experience, specific project knowledge, and ability to perform the Project Manager and supporting environmental services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **SCOPE OF SERVICES.** The CONTRACTOR will perform services for the preparation and certification of California Environmental Quality Act (CEQA) Compliance Documents for the General Plan Update as further defined in the attached Exhibit "A" beginning on page 11.

The CONTRACTOR shall be responsible for providing services for the preparation and certification of California Environmental Quality Act (CEQA) Compliance Documents for the General Plan Update consistent with the budget and scope of work in Exhibit "A". The CONTRACTOR shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY and as referenced in Exhibit "A". The CONTRACTOR shall appear at meetings cited.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

3. **PROJECT COORDINATION AND SUPERVISION.**

David DeVries, Development Services Director, is hereby designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single professional analyst to act as the Project Director, or Principal in Charge, to provide supervision and have overall responsibility for the progress and

# Attachment A - Exhibit I

execution of this Agreement for the CONTRACTOR. Carey Fernandes thereby is designated as the Project Director for the CONTRACTOR.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described in Exhibit "A" shall not exceed the base amount of \$142,290.00 (optional tasks will be considered under a separate agreement), without prior written authorization from the City's Project Manager. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "A" as determined by and in the sole discretion of the CITY.

The CONTRACTOR shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** The duration of this agreement will be until November 30, 2016 unless an extension is otherwise mutually agreed upon and approved.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CONTRACTOR discharges the City of all of the City's payment obligations and liabilities under this agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's written work product for the CITY's purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

## Attachment A - Exhibit 1

7. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint ventures with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession. Submittals Required with the Agreement. Failure of the CONTRACTOR to provide the following documentation with the executed agreement will cause delay in the agreement being executed by the City:

- A. Insurance as specified in Section 15 of this agreement;
- B. Taxpayer Identification Number (W-9)  
<http://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- C. IRS Letter of Non-Profit 501 (c) (3) (If Applicable);
- D. City Business License;

11. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in

# Attachment A - Exhibit I

similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

D. City's Right to Terminate for Default. If the CONTRACTOR fails to perform or adequately perform any obligation required by this agreement, the CONTRACTOR's failure constitutes a Default. If the CONTRACTOR fails to satisfactorily cure a Default within ten (10) calendar days of receiving a written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the CONTRACTOR, and any person claiming any rights by or through the CONTRACTOR under this Agreement. The rights and remedies of the City enumerated in this paragraph are cumulative and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or enacted or established at a later date, that may be available to the City against the CONTRACTOR.

**12. NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

**13. CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is



## Attachment A - Exhibit 1

already in the possession of the CONTRACTOR without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, agents, and subcontractors in the performance of services under this Agreement. CONTRACTOR's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONTRACTOR's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONTRACTOR expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include hired and non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all personal injury, bodily injury and property damage arising out of its operation under this Agreement. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

D. Workers' compensation insurance covering all of CONTRACTOR's employees. The CONTRACTOR shall comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement. That policy

# Attachment A - Exhibit I

shall provide a minimum of \$1,000,000 of employer's liability coverage, and the CONTRACTOR shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. If any required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

G. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

H. Deductibles. All deductibles on any policy shall be the responsibility of the CONTRACTOR

I. **Specific Provisions Required.** Each policy required under this section shall expressly provide, and an endorsement shall be submitted to the City, that:

1. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds. The CITY's Additional Insured status must be reflected on additional insured endorsement form CG 2012, or equivalent, which shall be submitted to the CITY.

2. The Policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by the CONTRACTOR to the CITY by certified mail, as reflected in an endorsement which shall be submitted to the CITY except for non-payment of premium, in which case ten (10) days' notice will be provided.

3. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

4. The CONTRACTOR may obtain additional insurance not required by this Agreement.

16. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

17. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

If a third part dispute or litigation, or both, arises out of, or relates in any way to the services provided under this Agreement, upon the City's request, the CONTRACTOR, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CONTRACTORs assistance includes, but is not limited to, providing professional consultations,

## Attachment A - Exhibit 1

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

18. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 30-day's written notice to the CONTRACTOR. During said 30-day period the CONTRACTOR shall perform all services in accordance with this Agreement. The CONTRACTOR may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the City of its obligations under this Agreement including but not limited to payment of invoices.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the City's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

F. The termination of the services shall be effective upon receipt of the notice by the CONTRACTOR.

19. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

# Attachment A - Exhibit I

To the CITY: David De Vries, Development Services Director  
City of Lemon Grove  
3232 Main Street  
Lemon Grove, CA 91945-1701

To the CONTRACTOR: Carey Fernandes, Principal  
Dudek  
605 Third St.  
Encinitas, CA 92024

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

## **20. CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.**

During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

If the CONTRACTOR violates any conflict of interest laws or any of these provisions in this section, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Contractor to liability to the CITY for attorney fees and all damages sustained as a result of the violation.

☒ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONTRACTOR shall:

1. Go to [www.fppc.ca.gov](http://www.fppc.ca.gov)
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

## **21. MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

## Attachment A - Exhibit 1

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

L. *Severability.* The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

# Attachment A - Exhibit I

## CITY OF LEMON GROVE

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Lydia Romero  
City Manager

## APPROVED AS TO FORM

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James P. Lough  
City Attorney

## DUDEK

*(Corporation – signatures of two corporate officers)*  
*(Partnership – one signature)*  
*(Sole proprietorship – one signature)*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*(Name)*  
\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*(Name)*  
\_\_\_\_\_  
*(Title)*